

ENTERED

June 14, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA

VS.

MICHAEL ORNELAS

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CRIMINAL ACTION NO. 2:10-CR-550-1

ORDER

Michael Ornelas filed a motion for appointment of counsel to assist him with a prospective motion to challenge his sentence based upon *Johnson v. United States*, 135 S.Ct. 2551 (2015). D.E. 47. Such a challenge would have to be brought pursuant to a motion to vacate, set aside or correct judgment pursuant to 28 U.S.C. § 2255. The statute of limitations applies to such motions pursuant to § 2255(f).¹ *Johnson* was decided on June 26, 2015.

A § 2255 movant is not automatically entitled to appointed counsel. *See United States v. Vasquez*, 7 F.3d 81, 83 (5th Cir. 1993); *see also Pennsylvania v. Finley*, 481 U.S. 551, 555, 107 S.Ct. 1990 (1987) (“We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions. Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.”) (internal citations omitted).


¹ The statute provides that the limitations period shall run from the latest of:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from filing by such governmental action;
- (3) *the date on which the right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review*; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f) (emphasis added).

Ornelas' motion (D.E. 47) for appointment of counsel is DENIED without prejudice. The Clerk is instructed to send him the forms for a motion pursuant to 28 U.S.C. § 2255. Ornelas is advised that the statute of limitations for *Johnson* claims expires on June 26, 2016, and his motion should be filed by that date.

SIGNED and ORDERED this 14th day of June, 2016.



Janis Graham Jack
Senior United States District Judge